CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 92

DEMETRIUS PHILIPPIDES, PETITIONER,

vs.

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION, PORT OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 25, 1930

CERTIORARI GRANTED MAY 26, 1930

(34,978)

(34,978)

SUPREME COURT OF THE UNITED STATES

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[fo]. 1] United States of America, Department of Labor, Washington

WARRANT OF ARREST

99127/315. No. 55644/978

To Commissioner of Immigration, Ellis Island, N. Y. H., or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Dimitrius Philipides, who landed at the Port of New York, ex S. S. "Byron", on the 10th day of September, 1925, has been found in the United States in violation of the Immigration Act of May 26, 1924, for the following among other reasons:

That he has remained in the United States for a longer time than permitted under the said act or regulations thereunder.

I, W. N. Smelser, assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized payable from the appropriation "Expenses of regulating immigration, 1929"; pending further proceedings the alien may be released from custody under bond in the sum of $500.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 5th day of September, 1928.

W. N. Smelser, Assistant to the Secretary of Labor.

[fol. 2] United States of America, Department of Labor, Washington

WARRANT OF DEPORTATION

99127/315. No. 55644/978

To Commissioner of Immigration, Ellis Island, N. Y. H., or to any officer or employee of the United States Immigration Service:

Whereas, from proofs submitted to me, Assistant to the Secretary of Labor, after due hearing before Immigrant Inspector A. E. Hanney, held at Ellis Island, N. Y. H., I have become satisfied that the alien Dimitrius Philipides, or Demetrius Philippides, or Dimitrios Filipides, who landed at the Port of New York, N. Y., ex S. S. "Byron", on the 10th day of September, 1925, has been found in the United States in violation of the Immigration Act of May 26, 1924, to wit:

That he has remained in the United States for a longer time than permitted under the said act or regulations made thereunder and may be deported in accordance therewith:

I, W. N. Smelser, Assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Greece, the country whence he came, at the expense of the appropriation "Expenses of Regulating Immigration, 1929", including an attendant, if necessary. The alien may be permitted to depart voluntarily or ship foreign one way, without expense to the United States, [fol. 3] to any country of his choice, except foreign contiguous territory, or adjacent islands, upon consent of the surety, such departure to be verified, and to be considered a satisfactory compliance with the terms of this warrant. Delivery of the alien and acceptance for deportation, or proof of voluntary departure, or shipment foreign, shall serve to cancel the outstanding appearance bond.

For so doing, this shall be your sufficient authority.

Witness my hand and seal this 2nd day of March, 1929.

W. N. Smelser, Assistant to the Secretary of Labor.

[fol. 4]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

WRIT OF HABEAS CORPUS

The President of the United States to Benjamin Day, Commissioner of Immigration, Port of New York, Greeting:

We command you that you have the body of Demetrius Philippidis, by you imprisoned and detained as is said, together with the time and cause of such imprisonment and detention by whatsoever name it shall be called or charged, before a Judge of this Court at a Stated Term of the United States District Court for the Southern District of New York, held at the United States Court House in the Post Office Building, Park Row and Broadway, Borough of Manhattan, City of New York, on the 19th day of April, 1929, at 10:30 o'clock in the forenoon, at Room 235, to do and receive what shall then and there be considered concerning him, and have you then and there this writ.

Witness Hon. John C. Knox, U. S. District Court, ~~Southern District~~ of New York.

Jno. C. Knox, Judge of the United States District Court for the Southern District of New York.
Alex. Gilchrist, Jr., Clerk. (Seal.)

Dated this 15th day of April, 1929.

The within writ is allowed this 15th day of April, 1929.
Jno. C. Knox, Judge of the United States Court.

[fol. 5] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex Rel. DEMETRIUS PHILIPPIDES, or DIMITRIOS FILIPIDES, Relator,

against

BENJAMIN M. DAY, Commissioner of Immigration, Port of New York, Respondent

Application for Writ of Habeas Corpus

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable District Court of the United States in and for the Southern District of New York:

The relator above named, by John D. Lynn, his attorney, petitions the Court and respectfully shows:

1. That the relator was arrested by Inspector M. A. Pitt, of the United States Department of Labor, Immigration Service, at 11:00 A. M., December 19th, 1928, in the City of Long Beach, Nassau County, N. Y., under and by virtue of a "Department Warrant of Arrest No. 55644/978, dated September 5th, 1928." That he was brought to Ellis Island, New York Harbor, N. Y., at 3:45 P. M., on December 19th, 1928.

[fol. 6] II. That the aforesaid warrant of arrest charged him

"with being in the United States in violation of the Immigration Act of May 26, 1924, for the reason that he remained longer in the United States than permitted under said act or regulations made thereunder."

III. That relator was granted a hearing at Ellis Island, N. Y. H., on December 20th, 1928, said hearing being continued and completed on January 7th, 1929, before Inspector A. E. Hanney. That on motion of relator's attorney, bail was fixed in the sum of $500.00, and he was released under bond of the National Surety Company, #5011496.

IV. That on January 8th, 1929, Inspector Hanney officially found that the charge contained in the warrant "having been sustained", recommended the deportation of the relator at the expense of the Government.

V. That relator, by John D. Lynn, Esq., of 140 Nassau Street, New York, N. Y., his attorney, immediately filed a brief protesting against his arrest and the decision of the examining Inspector.

VI. That thereafter, and on or about the 10th day of April, 1929, relator received by mail a copy of a letter signed by Byron H. Uhl, Assistant Commissioner of Immigration, U. S. Dept. of Labor, dated April 8th, 1929, Ellis Island, New York Harbor, N. Y., under file 99127/315, addressed to the National Surety Company, 118 William Street, New York, N. Y., directing them to surrender the [fol. 7] relator at the Law Office, Ellis Island, N. Y. H., N. Y., for deportation, on or before noon, April 18th, 1929, under penalty of forfeiture of the penal amount of the bond. That a postscript to said letter directed the relator

to forward his baggage to the pier of the S. S. "Providence" (Fabre Line), sailing April 19th, 1929.

VII. That in response thereto, relator duly surrendered himself under protest to the Law Office, Ellis Island, New York Harbor, at 10:00 A. M., April 15th, 1929.

VII. That the relator is now imprisoned, detained and restrained of his liberty by reason of having been taken into custody and is now awaiting deportation on April 19th, 1929, on the S. S. "Providence" of the Fabre Line.

IX. That your relator's restraint, detention and imprisonment is by virtue of an order of the U. S. Department of Labor, contained in a letter dated April 8th, 1929, signed by Byron H. Uhl, Assistant Commissioner of Immigration at Ellis Island, N. Y. H., and a certain Department Warrant of Arrest No. 55644/978, dated Sept. 5th, 1928, a copy of said order being annexed hereto.

X. That your relator claims that there is no legal authority or right vested in the U. S. Department of Labor, Immigration Service, to detain, restrain and imprison him for the purpose of deportation in that such action is illegal, without authority and contravenes an Act of Congress of May 26, 1924, more specifically described as Chapter 190, Section 19, 43 Stat. 164. That said law reads as follows:

[fol. 8] No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States. Any alien seaman who shall land in a port of the United States contrary to the provisions of this subchapter shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at

the expense of the appropriation provided in section 156 of this title. "(Feb. 5, 1917, c. 29, §34, 39 Stat. 896; May 26, 1924, c. 190, §19, 43 Stat. 164.")

XI. That it is herein contended that as a matter of fact that said relator was not apprehended and taken into custody within the "three year period" as prescribed by the section hereinbefore set forth.

XII. That is has been held by Judge Augustus N. Hand in U. S. ex rel. Danikas vs. Day, Circuit Court of Appeals, 2nd Circuit, July 20, 1927, that said section is a statute of limitations and a bar to deportation of an alien when three year period has been exceeded.

XIII. That no previous application for a Writ of Habeas Corpus has been made.

[fol. 9] XIV. Wherefore, your relator prays that a Writ of Habeas Corpus may issue directed to said Benjamin M. Day, Commissioner of Immigration, Port of New York, to bring before the Court forthwith the body of the said Demetrius Philippides or Dimitrios Filipides, relator herein, to do and receive what said Court shall then and there consider concerning him in his behalf, and then and there show cause, if any, for the taking and detaining the said Demetrius Philippides or Dimitrios Filipides for deportation.

XV. Relator further prays that the said Court may determine the legality of the imprisonment or restraint of the said Demetrius Philippides or Dimitrios Filipides, and to further determne the matter of his liberty, and thereupon dispose of his case pursuant to law.

XVI. That in view of the above circumstances it is respectfully submitted and urged that it will subserve the interests of justice that a Writ of Habeas Corpus in this Court be issued forthwith.

John D. Lynn.

[fol. 10] *Duly sworn to by Thos A. Kane. Jurat omitted in printing.*

[fol. 11] U. S. Department of Labor, Immigration Service

Office of Commission of Immigration, Ellis Island, New York Harbor, N. Y.

In answering refer to No. 99127/315.

April 8, 1929.

National Surety Company, 118 William Street, New York, N. Y.

Att. Mr. J. H. Claypoole, Custodian Department

Sir: You are hereby directed to surrender at the Law Office, Ellis Island, New York Harbor, N. Y., for deportation, on or before noon, April 18th, 1929, the alien Dimitrius Phillipidis, for whom you deposited Bond #5011496, on December 20, 1928.

Failure to comply with the foregoing instructions, will result in forfeiture of the penal amount of the Bond.

Respectfully, (Signed) Byron H. Uhl, Assistant Commissioner.

FK.

Official Copy to Alien, 11 E. Park St., Long Beach, L. I., N. Y., with the request that he forward all bulky baggage to the pier of the S. S. "Providence", (Fabre Line), sailing April 19, 1929. Hand baggage only is to be brought to Ellis Island when surrendering.

(Signed) Byron H. Uhl, Assistant Commissioner.

[fol. 12] In United States District Court

[Title omitted]

Return to Writ of Habeas Corpus.

Southern District of New York:

Vincent Praggio, being duly sworn, says that he is and during all the times herein mentioned has been an immigration inspector in the service of the United States; that he is attached to the law department of the immigration serv-

ice of the United States at Ellis Island; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the warrant of habeas corpus herein.

In compliance of the directions of this Court the body of the said alien in his own proper person was produced herewith before this Court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law and that the writ should therefore be quashed.

[fol. 13] (a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation pursuant to which the said alien was held were not regular, fair and in compliance with the statute applicable in such cases nor facts upon which this Court can determine that the proceedings were either irregular, unfair or not in compliance with the said statute.

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusions of the Department of Labor upon which the warrant of deportation was issued.

(c) It does not allege that there was any evidence before the Department of Labor upon which it based or could have based its findings and conclusions in accordance with which the warrant of deportation was issued.

(d) It does not appear by allegations of fact that the issue sought by the petition now to be litigated in this court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the above named alien copies of which are produced and filed herewith as part of its return,

1. The relator herein entered the United States at the Port of New York on September 15th, 1925, on the S. S. "Lord Byron". He had been employed as a cook on this [fol. 14] vessel and on his arrival he deserted, and has re-

mained in this country ever since. On December 19th, 1928, the alien was served with a warrant of arrest, dated September 5th, 1928. The warrant of arrest charged that the relator had been found in the United States in violation of the Immigration Act of May 26th, 1924, for the reason that he has remained in the United States for a longer time than permitted under the said act or regulations made thereunder.

The relator admits that he deserted the vessel on which he had been previously engaged, immediately upon his entry and that he has ever since been employed in a restaurant. The relator was not in possession of an unexpired immigration visa at the time of his landing.

2. As appears from the record, the alien was duly informed and apprised of the charges against him. He was afforded a full, complete and fair hearing by the Department of Labor upon the said charges and was afforded a full, complete and fair opportunity to answer and submit evidence upon said charges. There was evidence before the Department of Labor sufficient to sustain the said charges. The Department of Labor duly found that the charges were sustained. That they were in fact fully sustained by the proofs that were before and were considered by the Department of Labor. In any event it cannot be said on the record herein the Department of Labor abused the discretion vested in it by Congress and its determination was final and conclusive.

3. Deponent denies any knowledge or information sufficient to form a belief as to the truth of the allegations of [fol. 15] relator's petition except as to the allegations heretofore expressly admitted.

Wherefore deponent prays that the writ of habeas corpus herein be dismissed and the said alien remanded to the custody of the Immigration Department at Ellis Island, New York.

(Signed) Vincent Praggio.

Sworn to before me this 19th day of April, 1929. Armand Chamhalen, New York, Notary Public, New York County, #375. Term expires March 30, 1931.

[fol. 16] U. S. Department of Labor, Immigration Service, Ellis Island, N. Y. H.

File No. 99127/315

DEMETRIUS PHILIPPIDES or DIMITRIOS FILIPIDES

RECORD OF HEARING

Hearing held at Ellis Island, N. Y. H., on December 20, 1928.

Under Department warrant of arrest No. 55644/978, dated Sept. 5, 1928.

Present for the Government: Inspector A. E. Hanney; Secretary F. B. Nathanson; Interpreter D. Christopher (Greek).

Present for the alien: Alien present in person, represented by attorney Thomas A. Kane, 140 Nassau St., N. Y. C.

Alien brought to Ellis Island by: Inspector M. A. Pitt. Date: 2:45 P. M., December 19, 1928.

Result of medical examination (State finding): Not certified.

Verification of landing: "Byron", 9-10-25, Crew.

Last foreign address: Mother, Maria Philippides, Strapourgias, Andras, Greece.

U. S. Address: 11 E. Park St., Long Beach, L. I., N. Y.

Relatives in U. S.: None.

Passport status: Alien has no passport.

Description: 5′ 5″, wt. 140 lbs., black hair, brown eyes, scar on right eyebrow.

Property and effects: $300 in Greek Bank, 205 West 33rd St., N. Y. C.; baggage at 11 E. Park St., Long Beach, L. I. N. Y.

Foreign address to which deportable: C/o Mother, Maria Philippides, Strapourgias, Andras, Greece.

[fol. 17] At Ellis Island, N. Y. H., December 20, 1928.

Alien, sworn by Inspector Hanney, testifies in Greek, through Interpreter Christopher, as follows:

Q. What is your correct name?

A. Demetrius Philippides.

Q. Have you ever been known by any other name?
A. No.
Q. What is your present address?
A. 11 E. Park St., Long Beach, L. I.
Q. What is your business address?
A. I work in a restaurant in the same place where I live. I live in the rear part of the building.
Q. I now show and serve upon you Department warrant of arrest No. 55644/978 dated September 5, 1928, in which you are charged with being in the United States in violation of the immigration act of May 26, 1924, for the reason that you remained longer in the United States than permitted under the said act or regulations made thereunder. Under the law you have the right to be represented by counsel at your own expense. Do you wish to be so represented?
A. Yes, I have an attorney here, Mr. Thomas A. Kane, 140 Nassau St., New York City, who will represent me.

Inspector to attorney

Q. Are you ready to proceed with the hearing now?
A. No, I would like to get an adjournment, if possible.

[fol. 18] To Alien

Q. Pending final disposition of your case are you able to furnish bond in the sum of $500?
A. Yes.
Q. In the event that you secure bond what will be your address?
A. 11 E. Park St., Long Beach, L. I., N. Y.
Q. You understand that in the event that you secure bond, you are to appear at this station whenever requested? If you fail to do so your bond will be forfeited?
A. Yes.

Hearing adjourned to January 3, 1929, at 10 A. M.

Continuation of Hearing in the Case of Demetrius Philippides or Dimitrios Filipides

Preliminary hearing held at Ellis Island, N. Y. H., on December 20, 1928.

Hearing continued at Ellis Island, N. Y. H., on January 7, 1929.

Present on behalf of the Government: Inspector A. E. Hanney, Interpreter Mrs. Yovtcheff (Greek), Secretary Ruth Tashman.

Alien was present in person; was represented by Attorney Thomas A. Kane, of 140 Nassau Street, New York City.

[fol. 19] Inspector to attorney:

Q. Are you ready at this time to proceed with the hearing in the case of your client, Demetrius Philippides?

A. Yes.

Alien, being duly sworn, testified in Greek, through interpreter, as follows:

Q. How old are you and when and where were you born?
A. 21, born in Andras, Greece, July 10, 1908.
Q. What nationality and race are you?
A. Greek, Greek race.
Q. What is your occupation?
A. I am a cook.
Q. Are you married or single?
A. Single.
Q. What is the nearest large city to your birthplace?
A. Siros, which is three hours' away by boat.
Q. What was you- last adress in your native country?
A. Strapourgias, Province of Andras, Greece.
Q. When did you last leave your native country?
A. April 25, 1925.
Q. Where did you go at that time?

(Attorney objects—objection noted and overruled.)

A. I went to Piraeus, Greece.
Q. How long did you remain in Piraeus?
A. Fifteen days.
Q. Where did you go when you left Piraeus?

(Attorney objects—objection overruled.)

[fol. 20] A. I left Piraeus as a sailor.

Q. What was the name of the ship that you were engaged on?

(Attorney objects—objection overruled.)

A. "Byron."

Q. Did you board the ship as a member of the crew?

A. Yes, as a sailor.

(Attorney objects—objection noted, overruled.)

Q. Where did you sail from on the S. S. "Byron"?

(Attorney objects—objection overruled.)

A. From Piraeus.

Q. At the time you left Piraeus, what was the ship's destination?

(Attorney objects—objection overruled.)

A. Patras to New York.

Q. Did the S. S. "Byron" arrive at the Port of New York at any time while you were a member of the crew?

(Attorney objects—objection overruled.)

A. Yes.

Q. When did you arrive in New York City?

(Attorney objects—objection overruled.)

A. I do not remember.

Q. I show you a verification of landing which indicates that one Demetrius Filipidis arrived at the Port of New [fol. 21] York on the S. S. "Byron", September 10, 1925, at that time being a member of the crew; under Remarks, it appears that the above seaman was engaged at Piraeus August 20, 1925, and that no record of headtax being paid at New York appears and that he was reported as a deserter by the ships' owners September 18, 1925. Do you identify yourself as the person indicated in this verification of landing?

(By Attorney: I object to the question and also to the fact that the paper presented to the alleged alien for his identification has not been connected in the evidence with this particular alien.)

A. (Attorney answers for alien:) I do not identify myself as the individual mentioned in this document.

Q. At the time of your entry at the Port of New York, September 10, 1925, did you desert the SS. "Byron" or did you remain a member of same?

(Attorney objects; objection overruled.)

A. I left the ship and I went to New York.

Q. At the time of your entry, were you in possession of an unexpired immigration visa issued by an American Consul?

(Attorney objects; objection overruled.)

A. No.

Q. What is your father's name and where was he born?

A. Theodoros, born in Andras.

Q. Is he living or dead?

A. He is dead.

Q. What was your mother's name and where was she born?

[fol. 22] A. Maria, born in Andras, she is home in Greece.

Q. What is her present address?

A. Strapourgias, Andras, Greece.

Q. Have you any brothers or sisters in Greece?

A. Two sisters in Greece and three brothers.

Q. What are their names?

(Attorney objects; objection overruled.)

A. Ellen, Violette and brothers, Nicholas, John and Haralambos—all except Nicholos with mother and he is in Piraeus, Greece, his address being Odhos Georgiou Seize, Piraeus, Greece.

Q. Have you any relatives in the United States?

(Attorney objects; objection overruled.)

A. None.

Q. When and where were you baptised? In what church?

A. I do not remember the date but the name of the church is Aio Pandeleimon in Strapourgies.

Q. Did you also attend this church?

A. Yes.

Q. What schools did you attend?

A. In Lamira, Greece, public school.

Q. By whom were you last employed in your native country?

(Attorney objects; objection overruled.)

A. For my father.

Q. Have you a passport or any other document of your nationality?

(Attorney objects; objection overruled.)

[fol. 23] A. Yes, I have a birth certificate.

(Birth certificate placed on file and made part of record. Same indicates that alien was born in Lamira, Greece.)

(By Attorney: I object to the introduction of the alleged birth certificate because of the fact that there has been no identification of same by the alleged alien and there is no proof of any connection between the alleged alien and the individual described on the said certificate.)

Q. Have you ever been arrested or in prison?

(Attorney objects; objection overruled.)

A. Never.

Q. Have you ever been an inmate of any Hospital or institution?

(Attorney objects; objection overruled.)

A. No.

Q. Have you any money in the bank or any other property?

(Attorney objects; objection overruled.)

A. $300 in the Greek Bank at 205 West 33rd Street, New York City.

Q. Have you any baggage or property anywhere?

A. Yes, at my address, 11 East Park Street, Long Beach, Long Island.

Q. Have you anything to say why you should not be deported to the country of which you are a citizen?

[fol. 24] (By Attorney for alien:)

A. I believe that I entered this country legally and therefore am entitled to the rights and privileges of residence

of this country and consequently object to these proceedings and any possible deportation.

By Inspector to alien:

Q. In the event that the Department gives you permission to reship foreign one way in lieu of deportation, are you willing to take advantage of this opportunity?

(Attorney objects; objection overruled.)

A. Yes, in case I have to go back.

Hearing closed.

SUMMARY OF HEARING

Demetrius Philippides or Dimitrios Filipides, 21, male, single, seaman, native and citizen of Greece, Greek race, arrived at the Port of New York as a member of the crew of the S. S. "Byron", September 10, 1925, and deserted. Arrival verified.

Hearing held at Ellis Island, N. Y. H., December 20, 1928, and continued on January 7th, 1929, by Inspector A. E. Hanney under Department warrant of arrest 55644/147, September 5, 1928, charging "Remained Longer". Alien present in person. Represented by counsel, Thomas A. Kane, 140 Nassau Street, New York City.

Warrant read and explained. No additional charge lodged.

[fol. 25] This alien arrived as a member of the crew on the vessel and date indicated in the first paragraph and deserted. He continued to remain in the United States longer than permitted under the Act of May 26, 1924, or regulations made therennder. His residence has not been made permanent under the immigration laws. He is not in possession of an unexpired immigration visa. Alien was released on bond in the sum of $500, his address being 11 East Park Street, Long Beach, Long Island, N. Y.

Alien is not in possession of a passport but is in possession of a birth certificate, same being attached to file. Bureau's assistance will be necessary in securing a passport for the alien.

The charge contained in the warrant having been sustained by the evidence, I recommend deportation of the alien at Government expense but that he be permitted to reship foreign one way in lieu of deportation.

A. E. Hanney, Immigrant Inspector.

[fol. 26] IN UNITED STATES DISTRICT COURT

DECISION

The within writ is dismissed. The relator's situation appears to fall squarely within the ruling of the Circuit Court of Appeals in U. S. ex rel., Rios vs. Day, 24 Fed. 654. Under the charge made against relator, he was not entitled to a hearing before a Board of Special Inquiry. See paragraph 3, subdivision 1 of Rule 6, Immigration Rules of March 1, 1927.

5/10/29.

Jno. C. Knox, U. S. D. J.

[fol. 27] IN UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA ex Rel. DEMETRIUS PHILIPPIDES or DIMITRIOS FILIPIDES, Relator,

against

BENJAMIN M. DAY, Commissioner of Immigration, Port of York, Respondent

ORDER DISMISSING WRIT—May 17, 1929

The petition and writ of habeas corpus for the release of the above named relator having come on to be heard before this Court on April 19, 1929, and the respondent having filed a return to said petition and writ duly verified and after hearing Thomas A. Kane, attorney for the relator, in support thereof, and Leon E. Spencer, Assistant United States attorney, in opposition thereto, it is

[fol. 28] Ordered that the said writ of habeas corpus be and the same hereby is dismissed and the relator, Deme-

trius Philippides or Dimitrios Filipides, be and he is hereby remanded to the custody of the Commissioner of Immigration of the Port of New York and it is further

Ordered that deportation of the said alien be stayed for a period of five days after the entry of this order, and it is further

Ordered that in the event that the relator perfects an appeal from this order to the Circuit Court of Appeals for the Second Circuit within five days of the date of the entry of this order, said relator, Demetrius Philippides or Dimitrios Filipides, shall be released from the custody of the Commissioner of Immigration pending the determination of said appeal on the relator filing cash, a bond or undertaking in the sum of $1,000, properly conditioned, with this Court, said bond to be approved by the Clerk of this Court.

John C. Knox, U. S. D. J.

Notice of settlement waived.

Thos. A. Kane, Goodhue, Morrison & Lynn, Attys. for Relator.

[fol. 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes the relator-appellant in the above entitled cause and files the following assignment of errors upon which he will rely upon the prosecution of the appeal in the above entitled cause from an order made and entered herein by this Court on the 17 day of May, 1929.

The Court erred in dismissing the writ of habeas corpus for the following reasons:

First. The Court should have sustained the writ of habeas corpus because the evidence adduced before the Commissioner of Immigration showed that the relator was not arrested by the Department of Labor until more than three years after his entrance into the United States.

Second. The Court erred in finding as a matter of law that "the relator's situation appears to fall squarely within

[fol. 30] the ruling of the Circuit Court of Appeals in United States ex rel. Rios vs. Day, 24 Fed. 654."

Third. The Court erred in failing to find as a matter of law that the relator comes within the provisions of Section 34 of the Immigration Act of 1917, barring deportation beyond the three year period of limitation.

Fourth. The Court erred in finding as a matter of law the relator was not required to appear before a Board of Special Inquiry.

Whereas by the law of the land the said writ of habeas corpus should have been sustained and the relator-appellant should have been released from custody, by his attorney, John D. Lynn, the relator-appellant prays that the errors in the record and proceedings and the order made on the 17 day of May, 1929, may be reversed and for nought held and esteemed and that the said writ of habeas corpus herein be sustained and the relator-appellant released from custody and for such other and further relief as may be proper in the premises.

Dated N. Y., May 17th, 1929.

Thos. A. Kane, Attorney for Relator. Office & P. O. Address: 140 Nassau Street, Borough of Manhattan, City of New York.

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL

The petitioner, Demetrius Philippides, by his attorney, Thos. A. Kane, feeling aggrieved by the order made on the 17th day of May, 1929, by this Court, dismissing the writ of habeas corpus herein, does hereby appeal from the said order and decision of this Court to the United States Circuit Court of Appeals for the Second Circuit, and prays that this appeal may be allowed and that a transcript of the record of the proceedings and papers upon which the said order and decision was made, and duly authenticated,

may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated New York, N. Y., May 17th, 1929.

Thos. A. Kane, Attorney for Relator-Appellant.
Office and Post Office Address: 140 Nassau Street, Borough of Manhattan, New York, N. Y.

[fol. 32] In United States District Court

[Title omitted]

Order Allowing Appeal

On reading the petition of Demetrius Philippides or Dimitrios Filipides, made on his behalf by Thos. A. Kane, his attorney, dated May 16th, 1929, for appeal and consideration of the assignment of errors presented therewith, it is

Ordered, that the appeal herein be allowed as prayed for, and it is further

Ordered, that a certified transcript of the record and all proceedings be transmitted to the Circuit Court of Appeals for the Second Circuit.

Dated New York, May 17th, 1929.

Jno. C. Knox, Judge of the United States District Court for the Southern District of New York.

[fol. 33] Citation, in usual form, omitted in printing.

[fol. 34] In United States District Court

[Title omitted]

Stipulation on Appeal Record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated November 25, 1929.

Thos. A. Kane, Attorney for Relator-Appellant.
Charles H. Tuttle, Attorney for Respondent-Appellee.

[fol. 35] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 36] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1929

No. 232

Argued January 16, 1930. Decided February 3, 1930

UNITED STATES OF AMERICA ex Rel. DEMETRIUS PHILIPPIDES or DIMITRIOS FILIPIDES, Relator-Appellant,

v.

BENJAMIN M. DAY, Commissioner of Immigration, Port of New York, Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York

Before Swan, Augustus N. Hand, and Chase, Circuit Judges

Appeal from the District Court of the United States for the Southern District of New York.

From an order dismissing a writ of habeas corpus, and remanding the relator to the custody of the respondent for deportation, the relator has appealed. Affirmed.

Thomas A. Kane, of New York City, for appellant.

Charles H. Tuttle, U. S. Atty., of New York City (Leon E. Spencer, Asst. U. S. Atty., of New York City, of counsel), for appellee.

OPINION

Per CURIAM.

The relator is an alien seaman, who arrived at the port of New York in September, 1925, as a member of the crew of a steamship. He deserted his ship, and ever since has remained here, working as an employee in a restaurant. More than three years after desertion he was arrested on a warrant charging him with remaining in the United States for a longer time than permitted by the Immigration Act of 1924 (43 Stat. 153), or the regulations prescribed there-

under. After a hearing at Ellis Island, he was ordered to be deported to Greece, whence he had come.

The relator contends that his deportation is governed by section 34 of the Immigration Act of 1917 (39 Stat. 896 [8 U. S. C. A. § 166]). The Commissioner of Immigration claims that section 14 of the Immigration Act of 1924 (43 Stat. 162 [8 U. S. C. A. § 214]) controls. The same contentions were made in United States ex rel. Piccolella v. Commissioner (decided December 2, 1929, C. C. A. 2) 36 F. (2d) 1022, where the facts were in all respects similar. On the authority of that case, the order is affirmed.

[fol. 37] In United States Circuit Court of Appeals, Second Circuit

United States ex Rel. Demetrius Philippides, Relator-Appellant,

v.

Benjamin M. Day, as Commissioner, etc., Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York

Judgment—Filed Feb. 10, 1930

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby is, affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 38] Endorsed: United States Circuit Court of Appeals, Second Circuit.

[File endorsement omitted.]

[fol. 39] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 40] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 26, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,978. U. S. Circuit Court of Appeals, Second Circuit. Term No. 92. Demetrius Philippides, Petitioner, vs. Benjamin M. Day, Commissioner of Immigration, Port of New York. Petition for writ of certiorari and exhibit thereto. Filed April 25, 1930. File No. 34,978.

FILE COPY

No. 92

Office Supreme
APR
CHARLES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

DEMETRIUS PHILIPPIDES,

Petitioner,

v.

BENJAMIN M. DAY, Commissioner of Immigration, Port of New York,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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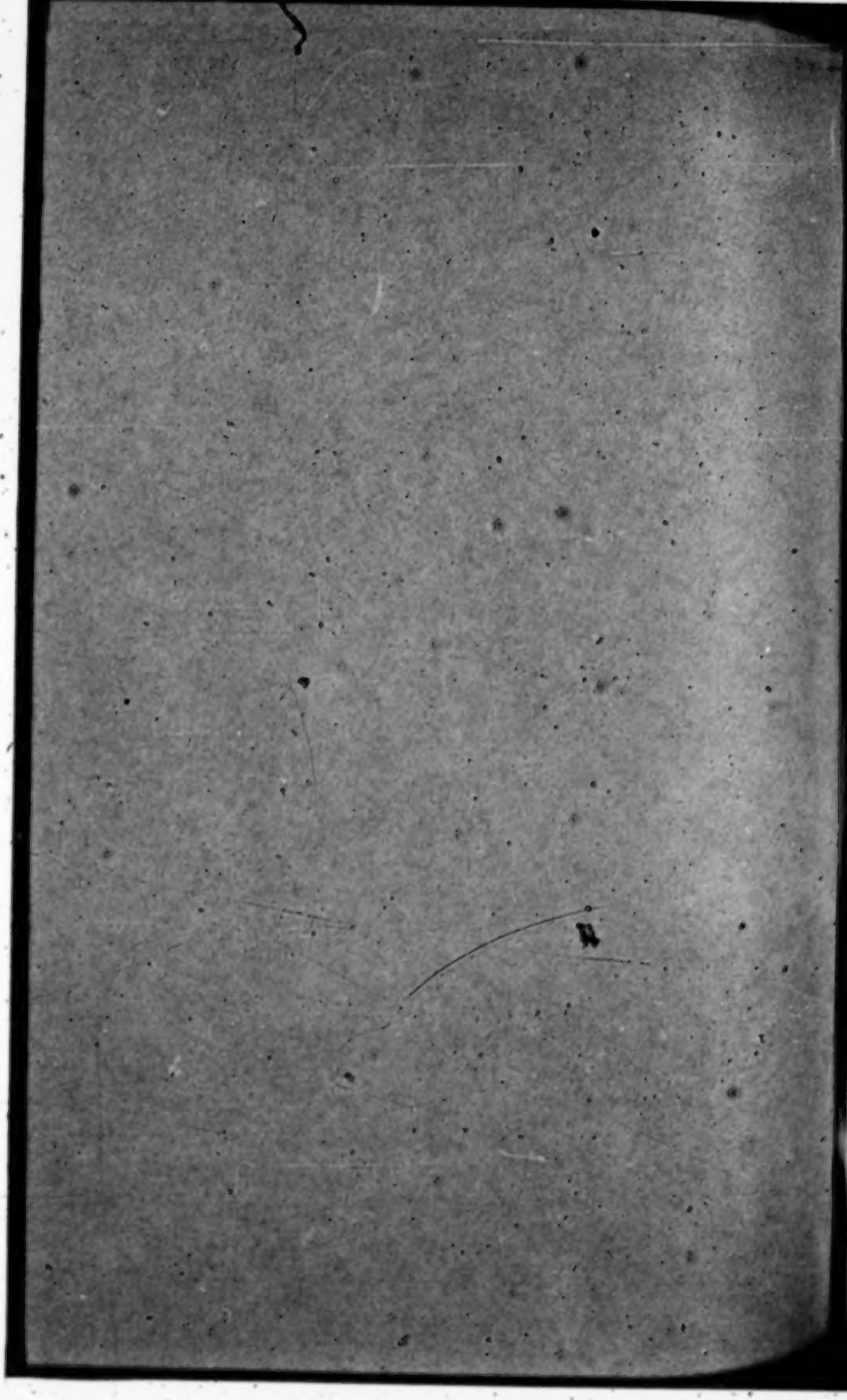

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

DEMETRIUS PHILIPPIDUS,
Petitioner,

v.

BENJAMIN M. DAY, Commissioner of Immigration, Port of New York,
Respondent.

No.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, DEMETRIUS PHILIPPIDUS, by THOS. A. KANE, his attorney, respectfully prays for a writ of certiorari to review the decree of the United States Circuit Court of Appeals for the Second Circuit, affirming the decree of the District Court of the United States for the Southern District of New York, dismissing a writ of *habeas corpus* obtained by petitioner on the ground that he was exempt from deportation by reason of the provisions of Section 34 of the Immigration Act of 1917.

Question Involved.

The instant case involves only one question of law:

Does Section 34 of the Immigration Act of 1917 bar the deportation of seamen who have unlawfully entered this country subsequent to 1924, and have remained here for a period of more than three years?

Statement of the Case.

Your petitioner was arrested in the City of Long Beach, Nassau County, New York, on December 18th, 1928, under a warrant of the Department of Labor, charging him with having been "found in the United States in violation of the Immigration Act of May 26, 1924," in that "he has remained in the United States for a longer time than permitted under the said act or regulations thereunder."

The evidence is undisputed that the petitioner is a native of Greece; that he shipped from Piraeus, Greece, on or about August 20th, 1925, on board the steamship "*Byron*", as a seaman, arriving at the Port of New York, September 18th, 1925; that he then and there *deserted* from the said ship, and was arrested on the warrant, as aforesaid, three years and three months later.

On April 15th, 1929, your petitioner sued out a writ of *habeas corpus* in the United States District Court for the Southern District of New York, contending that Section 34 of the Immigration Act of 1917 (Ch. 29, 39 Stat. 874) was in effect a statute of limitation which would bar his deportation after the passage of three years from the date of his entry.

The writ was dismissed on May 10th, 1929, upon the authority of *U. S. ex rel. Rios* vs. *Day*, 24 F. (2d) 654. An appeal from the order dismissing the writ was taken to the United States Circuit Court of Appeals for the Second Circuit (fols. 29-35, Transcript of Record). That court in a *per curiam* opinion affirmed the order of the District Court upon the sole authority of *U. S. ex rel. Piccolello* vs. *Commissioner*, 36 F. (2d) 1022, which in turn was decided solely upon the authority of the *Rios* case, *supra*.

Statute Involved.

Section 34 of the Immigration Action of 1917, provides:

> That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time, within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualification for admission to the United States, and if not admitted, said alien seaman shall be deported at the expense of the appropriation for this Act as provided in Section Twenty of this Act.

Reasons for Granting the Petition.

1. The decision of the Circuit Court of Appeals for the Second Circuit in this case is directly in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in *Nagle* v. *Hansen*, 17 F. (2d) 557, in its interpretation of the section in question.

2. The apparent holding of the court that Section 34 of the Immigration Act of 1917 was repealed by the Immigration Act of 1924 is error, in view of the fact that this section appears in the later United States Code, Title 8, as part of Section 166, and, further, in view of the legislative history of the 1924 Act.

3. The question involved is of great importance not only because of the conflict in the present state of the law, but also because it is determinative of a large number of similar cases.

Jurisdiction.

That this court has power, in a case made final in the Circuit Court of Appeals, to issue a writ of certiorari to review a decree of that court on appeal from an order of the District Court dismissing a writ of *habeas corpus*.

That this court is given the right under the provisions of Section 240 (a) of the Judicial Code to review a decision of a Circuit Court of Appeals in conflict with the decision of another Circuit Court of Appeals on the same matter.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the decree of the Circuit Court of Appeals for the Second Circuit be granted.

Dated, New York, April 21, 1930.

THOS. A. KANE,
Attorney for Petitioner.

BRIEF IN SUPPORT OF THE PETITION.

POINT I.

Petitioner, an alien seaman, unlawfully in the United States, was not taken into custody within the three year period of limitation specified in Section 34 of the Immigration Act of 1917, and, therefore, is exempt from deportation, since the provisions of this section are in effect a statute of limitations.

Petitioner shipped from Piraeus, Greece, as a sailor aboard the S. S. *"Byron"* (Record, Fols. 58-59), and deserted his ship on September 10, 1925, immediately on its arrival in the Port of New York. He was taken into custody on December 18, 1928, over three years from the date of his unlawful entry.

In *U. S. ex rel. Danikas* vs. *Day,* 20 F. (2d) 773 (C. C. A., Second Circuit), referring to Section 34 of the Immigration Act of 1917, Judge Augustus N. Hand, rendering the decision, said:

> "This section naturally read, would seem to require the Secretary of Labor to arrest a seaman within three years after unlawfully landing in the country if he sought to deport him."

and further, in the same case, at page 736, he says:

> "Section 34 is much plainer, for it says nothing about the institution of proceedings but provides that 'any alien seaman who shall land in a port of the United States contrary to the provisions of this act . . . and shall at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody . . . shall be deported.'

> This, by the plainest language, makes the taking *'into custody'* within three years from landing the critical factor."

The evidence in this case shows that the relator arrived at the Port of New York September 10th, 1925, and that he was apprehended on a warrant on December 18th, 1928, more than three years after his arrival.

It was held in *U. S. ex rel. Filippini* vs. *Day*, 18 F. (2d) 781, District Court, S. D., New York, December 3rd, 1926, that:

> "It is now the arrest which counts, and not the date of the issue of warrant or the time of the actual deportation."

The petitioner, therefore, submits that as the undisputed evidence shows that he was not taken into custody until more than three years after his arrival in the United States, the Secretary of Labor is prohibited by the limitation contained in Section 34 of the Act of 1917, from subjecting him to deportation proceedings at this time.

POINT II.

Section 34 of the Immigration Act of 1917 has not been repealed as the lower Court in effect held.

The undisputed evidence before the Immigration Inspector at Ellis Island, and the authorities cited in Point I hereof, effectually fixes the status of the relator as a seaman.

The Commissioner of Immigration, in support of his claim to his right to deport the petitioner, relies on the

alleged authority of Section 14 of the Immigration Act of 1924, which reads as follows:

> "Any alien, who at any time after entering the United States is found to have been at the time of entry not entitled under the Act to enter the United States, or to have remained therein for a longer period than permitted under the Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in Sections 19 and 20 of the Immigration Act of 1917. Provided, that the Secretary of Labor may, under such conditions and restrictions as to the support and care as he may deem necessary, permit permanently to remain in the United States any alien child who, when under 16 years of age, was heretofore temporarily admitted to the United States, and who is now within the United States and either of whose parents is a citizen of the United States (43 Stat. L. 162)."

It is the contention of the petitioner that Section 14 has no application to alien seaman.

A reading of the Immigration Act of 1924 shows that it makes specific reference to "Immigrants, quota and non-quota" (such term or terms being used in Sections 2 to 10 inclusive, and Sections 11, 12, 13, 16 and 18), to "aliens" (in Sections 3, 10, 14 and 15) and to "alien seaman" (in Sections 3 and 19) thereby creating by actual and specific reference three separate and distinct classes of individuals, viz.: (1) "immigrants", (2) "aliens", and (3) "alien seamen", and a certain, definite method of control and disposal is provided in the said Act for each class.

Inasmuch as the petitioner does not claim to come within the description of an "immigrant" no argument need be advanced as to the sections of the act relating to this class.

In connection with the second class, "aliens", the petitioner directs attention to the fact that the act provides for the entry of an alien (Sect. 3, Subdivs. 2, 3, 4 and 6), for the re-entry (Section 10), for deportation (Section 14), and for the maintenance of the exempt status provided in Section 3 (Section 15).

It would appear that Congress intended thereby to effect the control and regulation of "aliens" by said sections, and that these sections were directed especially to this particular class and to no other.

Apparently Congress thought it necessary to include in the Act of 1924, sections that would specifically refer to, and actually restrict, limit and control the third class "alien seaman", and it did so by Subdivision 5 of Section 3 (providing for the maintenance of the status of a bona fide seaman), Section 15 (providing for admission under a bond), Section 19 (prohibiting landing except in case of sickness or under Departmental regulations).

Section 19 even goes further and expressly gives to the Secretary of Labor the right and the power to prescribe rules and regulations "for the ultimate departure, removal, or deportation of such alien (alien seaman) from the United States."

The wording of this section appears to be perfectly clear, but in view of the conflicting opinion in connection with Section 14, and its alleged applicability to the third class, "alien seamen", notwithstanding the wording of Section 19, it appears that this is a situation where "reference may be had to the reports of legislative committees to ascertain the purpose of Congress in adopting the Statute" (*Church of the Holy Trinity* vs. *United States*, 143 U. S. 457).

While debates in Congress are not generally appropriate sources of information to discover the meaning of a statute

(*Dunlay* v. *United States*, 173 U. S. 65) the Supreme Court has considered explanatory statements made by members in charge of bills (*United States* vs. *St. Paul, Minn. and Manitoba R. Co.*, 247 U. S. 310; *Wisconsin R. Comm.* vs. *C. B. & Q. R. Co.*, 257 U. S. 563). The meaning of a statute is often to be sought from the surrounding circumstances and preceding history (*Guarantee Ins. Trust & S. D. Co.* vs. *Gellers*, 123 U. S. 276; *Prestons Browder*, 1 Wheat. 115; *U. S.* vs. *U. P. R. Co.*, 9, U. S. 72).

Legislative History of the Act.

Before the passage of the 1924 act numerous concerted efforts had been made in the House of Representatives to curtail the rights of seamen. As early as December 31st, 1923, the Department of Labor submitted a proposed immigration act to Congressman Albert Johnson, Chairman of the House Committee on Immigration (68th Congress, 1st Session, Hearings before House Committee on Immigration and Naturalization, Serial 1A, pp. 551-565). That bill contained the provisions embodied in the House proposals for landing cards and for the repeal not only of Section 32 of the Act of 1917, which was subsequently repealed, but of Sections 33 and 34 as well.

Both of these suggestions were embodied in the Johnson bill (H. R. 7995) as reported in House Report No. 350 (68th Congress, 1st Session, March 24, 1924, see pp. 19 ff.), which stated that:

> "Enforcement of the sections (Sec. 32, 33 and 34) of the immigration act of 1917 respecting alien seamen has been one of the most difficult tasks confronting the Immigration Service" (p. 19).

Both provisions remained in the bill through the conference report of May 8, 1924.[1] Not until May 15th does the conference bill (Conference Committee, print No. 1) apparently lose the provision directly repealing Section 34.

The Senate had opposed making any changes in the law in so far as it affected seamen. To quote the statement of Senator Lodge, made on April 18, 1924, "The House passed the bill with certain clauses in it relating to alien seamen. Those were stricken out by the Senate" (Congressional Record, 68th Congress, 1st Session, p. 6641).

It became necessary, as the two houses could not agree upon the question of alien seamen, to have a conference committee. Senator King sought strenuously to include in the Senate bill to be presented to the conference committee an amendment which contained an express provision for the deportation of seamen who remained more than sixty days unless they could show they had not abandoned their status or were admissible as immigrants (Sec. 17c to S. 2576, Congressional Record, 68th Congress, 1st Session, p. 6636). The amendment was debated and thereafter defeated (p. 6642), nor was there any suggestion that it was already embodied in the provisions of the bill. Senator Reed, the Chairman of the Senate Committee on Immigration, and later Chairman of the Conference Committee

---

[1] 68th Congress, 1st Session, H. Report 688. The bill in its then form, less than three weeks before it was signed by the President, contained a Section 21 (d): "Section 32 of the Immigration Act of 1917 is repealed, but shall remain in force as to all vessels, their owners, agents, consignees, and masters, and as to all seamen, arriving in the United States prior to the enactment of this act. *Sections 33 and 34 of such act are repealed, to take effect after the expiration of four months after the enactment of this act, but the provisions of such Section 34 shall thereafter remain in force in the case of any alien seaman who has landed in a port of the United States before such repeal became effective.*" (Italics ours.)

(*idem*, p. 8235), suggested that the alien seamen question "ought to be dealt with in a separate bill" (*idem*, p. 6645). The whole matter was left as an open question for the Conference Committee. On May 15th the bill was agreed upon by both houses.

Senator Reed and Congressman Johnson explained what had been done about alien seamen to their respective houses. Both were agreed on two propositions with reference to the seamen's provisions:

(1) That they made it possible to keep sick seamen aboard the boats.

Senator Reed said:

> "All that we have done to the alien seaman law that is new has been to provide that after the inspection of alien seamen by the immigration authorities—and that inspection is required under the present law, and there is nothing new about that—the shipowner or master must keep on board any seaman who is indicated by the immigration inspector as unfit to land" (*idem*, p. 8577).

Congressman Johnson expressed the same thought thus:

> "In reference to the alien seamen's provisions, let me give you an exact statement of its purpose. It will work fairly for the United States and fairly for the sailors of the world. Seamen cannot now be held on board ship even long enough to give them the medical examination necessary for the protection of the United States. We correct that situation" (*idem*, p. 8651).

(2) That Section 19 applied only to excludable seamen such as those from the barred zone.

Senator Reed's views appear in a dialogue between himself and Mr. Fletcher:

"Mr. Fletcher: It seems to me there might be some question, by reason of the provisions of Section 19 and Section 3, as to whether there is any change in the matter of alien seamen. This is the provision in Section 3, that the word 'immigrant' does not include 'a bona fide alien seaman serving as such on a vessel arriving at a port of the United States.' He is not an immigrant. Then Section 19 provides that 'No alien seamen excluded from admission into the United States under the immigration laws,' can do so and so. If he is not an immigrant, is he excluded under the immigration law?

Mr. Reed of Pennsylvania: Yes, Mr. President. There are a great many people, several hundred million of them, who are not immigrants, but who are excluded from admission under the immigration laws. In other words, the immigration laws prescribe who shall be immigrants, and forbid the admission of millions of others, including all the Chinese, the Hindus, and the Malays.

Mr. Fletcher: Then the Senator's contention is that the able seamen on these vessels, although not immigrants, are excluded under our immigration laws?

Mr. Reed of Pennsylvania: Yes, under certain conditions they are.

Mr. Fletcher: Under certain conditions; and they are taken care of under Sections 19 and 20 of the committee report?

Mr. Reed of Pennsylvania: Precisely. They can be admitted temporarily under regulations, and that is a humane thing, because a Chinese ship coming into our ports with a Chinese crew should not be made a jail while it is in port" (idem, p. 8578).

Mr. Johnson states the proposition thus:

> "It is charged that Section 19 places the alien seamen under the immigration laws, and that to come ashore these seamen will have to comply with all the provisions of the immigration laws and be eligible to citizenship.
>
> There is nothing in that charge. The provision excluding from admission aliens ineligible to citizenship by its own terms does not apply to any alien who is not an immigrant as defined in Section 3. By the terms of Section 3, *bona fide* seamen are expressly declared not to be immigrants. Therefore seamen are not prevented from landing under the Japanese-Exclusion provision" (idem, p. 8651).

Mr. Johnson had previously—in answer to an inquiry as to the effect of Section 19—stated his views in these unmistakable terms:

> "I want to make it just as clear as I can that the provision the gentleman has just read only applies to those who cannot enter the United States, such as anarchists, and others who are in the excludable classes of Section 3 of the Act of 1917" (idem, p. 8638).

It is quite apparent that the Senate conferees had refused to agree to the bill unless the repeal of Section 34 of the 1917 Act was dropped. It was, as we have said, finally left out in the bill as it appears under date of May 15, 1924. Presumably the only effect of not repealing Section 34 was to retain the special status of seamen, including the three-year limitation in deportation proceedings of which the Circuit Court of Appeals has deprived them by its decision in the instant case. Throughout the extended debate on the seamen's provisions, as well as in the statements on

the conference report which Senator Reed and Congressman Johnson made, Section 14 of the 1924 Act was never once mentioned. There does not appear to be any doubt that no one regarded Section 14 as applicable to seamen or as having any effect on their situation.

Since the 1924 Immigration Act, Congressman Johnson has made a number of efforts to obtain the repeal of Section 34 upon the ground that it unwarrantedly makes a privileged class of seamen. Thus as recently as the first session of the 70th Congress the House Committee on Immigration and Naturalization reported favorably H. R. 10078, containing certain additional provisions for the deportation of aliens. In House Report No. 484, to accompany the bill, Congressman Johnson, writing for the committee, had this to say of Section 34 of the basic Act more than four years after the passage of the 1924 Act.

> "It will be noticed that this section (1) places a statute of limitation of three years from the time of landing upon the deportation of alien seamen, (2) affords a seaman a right to be heard before a board of special inquiry, and (3) apparently allows his admission unless he is at the time of such hearing a member of one of the excluded classes. No reason was apparent to your committee why a seaman should be granted any of these privileges, which are not granted to any other class of aliens, and it is therefore provided in the bill (subd. (b) of Sec. 7) that this section be repealed. The effect of this repeal will be to place the samen upon the same plane as any other alien so far as the procedure in arrest and deportation cases is concerned" (p. 13).

This was not an inadvertent statement, for he used substantially the same argument in his efforts to put through

the deportation bills of the previous Congresses (69th Congress, 1st Session, House Report 991, pp. 12-13, to accompany H. R. 11489; 68th Congress, 2nd Session, House Report 1292, pp. 14-15, to accompany H. R. 11796). His efforts during both sessions failed.

It would appear, therefore, that Representative Johnson, whose reputation as an expert on Immigration, and the laws that govern and control it, and the man to whom the Department of Labor turns when it desires to effect changes in the Immigration Laws, is of the opinion even today that Section 34 of the Act of 1917, was not affected by any part of the Act of 1924, and that it is still in full force and effect.

It is well to note the fact, now, that Mr. Johnson was the Chairman of the House Committee which conferred with the Senate Committee in the preparation of the bill which became the Immigration Act of 1924.

(a) Congress utilized in the Act of 1924 a certain definite method of repeal and modification.

The argument of the United States Attorney in the lower court was to the effect that Section 34 of the Immigration Act of 1917, was repealed by the Act of 1924.

The petitioner submits that there is nothing inconsistent in the Act of 1924 with the provisions of Section 34 of the Act of 1917 and that the later act neither actually nor in effect repealed or superseded the earlier act.

Section 25 of the Act of 1924 definitely sets forth the purposes of Congress in its enactment where it distinctly says:

> "The provisions of this act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such

> laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this act."

It would appear from a reading of the Act of 1924 that the framers utilized a particular method of changing, modifying or repealing sections of the Act of 1917. This method was by actual reference to specific sections to be amended or repealed.

This was done in the following instances:

> Act of 1924; Sect. 20, Subdiv. d: "Section 32 of the Act of 1917 is repealed * * *."
>
> Act of 1924; Sect. 26: "Section 9 of the immigration act of 1917 is amended to read as follows: '* * *'"
>
> Act of 1924; Sect. 27: "Section 10 of the immigration act of 1917 is amended to read as follows: '* * *'"

The logical conclusion to be drawn from the method used is that if Congress desired to repeal so important a provision as Section 34 of the Act of 1917, it would have followed a similar procedure and have done so by actual reference, as in the instances cited. This contention is further borne out by the terms of Section 25 of the Act, wherein attention is called to the fact, and the warning issued that

> "The provisions of this act are in addition to and not in substitution for the provisions of the immigration laws . . ."

(b) Section 34 of the Act of 1917 apparently applies only to alien seamen unlawfully in the United States.

It would appear from a study of the few cases on the point in question that most of the instances coming before the Court related to seamen who have stayed beyond the

time limit provided by the Immigration Rules, and that the Courts, therefore, have felt that they did not come within the limitation provided in Section 34, Act of 1917.

The language of the section is simple and unambiguous. It says in part:

> "That any alien seaman who shall land in a port of the United States contrary to the provisions of this act, shall be deemed to be unlawfully in the United States * * *"

and undoubtedly means what it says. It specifically and clearly sets forth the ways and means for the lawful entry of alien seamen, such as, for a limited period (to reship, visit, for medical attention, etc.) and then it goes on to say that a seaman landing for any other purpose "shall be deemed to be unlawfully in the United States".

The petitioner admits that he is "unlawfully in the United States" but he contends

> 1st. That he is an alien seaman.
>
> 2nd. That he was not taken into custody within three years after landing.
>
> 3rd. That as to him Section 34 of the Act of 1917 is a statute of limitations.
>
> 4th. That, therefore, the Commissioner of Immigration is prohibited from deporting him.

It would appear, also, that while there does not seem to be any decisions directly in point, the inference to be drawn from the opinions in cases somewhat analogous, is to the effect that the real test lies in the answer to the question of "whether the entry was lawful or unlawful", and if unlawful, then Section 34 protects the seaman from deportation.

In a recent case in this district, *Cellamare* vs. *Benj. M. Day*, 32 Fed. (2) 623, Judge Thacher said:

> "* * * The limitation contained in Section 34 of the Immigration Act of 1917 can have no application because in terms it applies only to alien seamen whose landing was contrary to the Act of 1917."

and in *Ex Parte Bildt*, 32 F. (2d) 894, it was said by the Court, after quoting Section 34, Act of 1917, as follows:

> "The difficulty of application arises out of the fact that the initial 'landing' of the appellant was not unlawful but pursuant to permission duly given by the immigration officials. But, if we assume its applicability during the sixty days covered by the permit the Immigration Service had no right to proceed against him. His 'landing' became unlawful only upon the termination of that period, and hence it must be held that the period prescribed by it did not commence to run until September 30, 1925, less than 3 years prior to his arrest for deportation."

The fair inference to be drawn from these two cases is that if the original entry had been unlawful, then the opinion and decision of the Court in both instances,—all other facts being equal,—would have been opposite to the actual decision, and the writs of habeas corpus in both instances would in all likelihood have been sustained.

(c) The construction placed on Section 34 of the Immigration Act of 1917 by the Department of Labor is entitled to great weight.

Where there is ambiguity in the meaning or application of a statute (*Cumberland Telephone and Telegraph Co.* vs. *City of Memphis*, 198 Fed. 955), as there apparently is in section 14 of the Act of 1924, the construction placed upon

it when it first went into operation, is the strongest evidence that it has been rightfully explained. The practical construction given to a doubtful statute by those whose duty it is to carry it into execution is entitled to great weight and will not be disregarded or overturned except for cogent reasons and unless it is clear that such construction is erroneous. (*First Nat'l Bank* vs. *U. S.*, 206 Fed. 374, 379, and authorities cited.)

In 1924, after the passage of the Immigration Act of that year, which said Act has not been amended or repealed since that date, the United States Department of Labor, Bureau of Immigration, having the duty to carry said law into execution, caused the "Immigration Laws" to be printed by the Government Printing Office at Washington, for the information and guidance of its own agents and the general public, and it included in the printing of the Act of 1917, Section 34, without change or comment, proving conclusively that it was the opinion of the immigration experts in that department that no part of the Act of 1924 changed or modified Section 34, Act of 1917, in any respect.

In 1927, when the Department of Labor again caused the Immigration Laws to be officially printed in book form, they again included Section 34 of the Act of 1917, without change or comment, and this was after they had had three years in which to study the application of the Act of 1924, and to observe its enforcement, effect, and judicial interpretation.

At that time, they even went so far as to include in the printed book of that year, the official publication of the department, the "Rules of March 1, 1927". Among said rules is quoted below, in part, Subdivision I, paragraph 1, of Rule 6, relating specifically to Section 34, Act of 1917,

containing the regulations and instructions covering the "arrest and deportation of alien seamen", as follows:

> "Any alien who shall come to a United States port as a seaman and land in the United States otherwise than in pursuance of and in accordance with the provisions of the Act of February 5, 1917, shall be arrested, as provided in Section 34 of said Act, whenever and wherever found in this country within three years from the date of landing."

As this rule is still in effect, it is apparent that the opinion of the experts on immigration in the Department of Labor in relation to the applicability of Section 34, Act of 1917, notwithstanding the provisions of Section 14, Act of 1924, in relation to alien seamen unlawfully entering the United States, and remaining for more than three years, remains unchanged.

It is also well to note that the Department of Labor, with each Congress, following 1924, has endeavored to have the Act of 1924 amended so as to specifically repeal Section 34 of the Act of 1917, but within success.

The petitioner believes, also, that those men, learned in the law, who have compiled in recent years the United States Code, United States Code Annotated, and the various Digests of Federal Laws, all of whom have without exception included Section 34, Act of 1917, as an inseparable part of the Immigration Laws of the United States, should be considered and respected. Their study of both Acts apparently lead them to believe that Section 34, Act of 1917, is still in full force and effect, and means exactly what its simple, understandable English says.

(d) The petitioner contends further that Section 34 of the Act of 1917 creates a special class in favor of seamen.

The unanimous Court in *Nagle* vs. *Hansen,* C. C. A., 9th Circuit, 17 Fed. (2) 557, dealing directly with this point, said:

> "The general provisions in the 1924 act that aliens, who have entered unlawfully or remained illegally at any time after entering the United States shall be taken into custody and deported, is inconsistent with the provisions of section 34 of the act of 1917, and would suggest a repeal of the latter by implication; unless section 34 may be said to create a special class, subject to special different treatment. And, considering it in the relation it bears to other provisions of the act of 1917, we think it does create a special limitation, in favor of seamen as a class, which is not repealed by the 1924 act. The act of 1917 contained a general provision (Sec. 19) governing the deportation of aliens, the provision common to those who entered while belonging to excluded classes being that they might be deported within five years after entry. That this provision, as it affects all aliens not within the admissible classes, was repealed by section 14 of the act of 1924 is clear enough. That repeal, however, in reason and relation, does not affect the special conditions separately expressed in section 34 of the 1917 law."

The petitioner, therefore, contends that, as Section 34 of the Act of 1917 has not been repealed and is still in effect, that he is entitled to the protection of the provisions thereof, and as deportation proceedings were not commenced within three years of the date of his landing, under the provisions of this act, they cannot be made effective as against him.

POINT III.

The law should not be left in its present state of confusion.

It is apparent, from the foregoing, that the law on this subject is in a hopeless and misleading state of confusion. We believe that it is unfair and unjust to litigants, to the attorneys practicing before the Federal Bench, to the Immigration service, and to students, to permit this situation to continue any longer, when an adjudication by this Court will forever settle the question.

We believe that this subject is of sufficient importance to warrant the consideration of this Court.

Respectfully submitted,

THOS. A. KANE,
Attorney for Petitioner.

FILE COPY No. 92.

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CHARLES E. HORNE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

DEMETRIUS PHILLIPIDES,
Petitioner,

vs.

BENJAMIN M. DAY, Commissioner of Immigration,
Port of New York,
Respondent.

PETITIONER'S BRIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

DEMETRIUS PHILLIPIDES, Petitioner, *vs.* BENJAMIN M. DAY, Commissioner of Immigration, Port of New York, Respondent.	No. 92.

PETITIONER'S BRIEF.

Statement.

The petitioner was arrested in the City of Long Beach, Nassau County, New York, on December 18th, 1928, under a warrant of the Department of Labor, charging him with having been "found in the United States in violation of the Immigration Act of May 26, 1924," in that "he has remained in the United States for a longer time than permitted under the said act or regulations thereunder."

The evidence is undisputed that the petitioner is a native of Greece; that he shipped from Piraeus, Greece, on or about August 20th, 1925, on board the steamship *Byron*, as a seaman, arriving at the Port of New York September 10th, 1925; that he then and there *deserted* from the said ship, and was arrested on the warrant, as aforesaid, three years and three months later.

On April 15th, 1929, the petitioner sued out a writ of *habeas corpus* in the United States District Court for the Southern District of New York, contending that Section 34 of the Immigration Act of 1917 (Ch. 29, 39 Stat. 874) was in effect a statute of limitation which would bar his deportation after the passage of three years from the date of his entry.

The writ was dismissed on May 10th, 1929, upon the authority of *U. S. ex rel. Rios* vs. *Day*, 24 F. (2d) 654. An appeal from the order dismissing the writ was taken to the United States Circuit Court of Appeals for the Second Circuit. That Court in a *per curiam* opinion affirmed the order of the District Court upon the sole authority of *U. S. ex rel. Piccolella* vs. *Commissioners*, 36 F. (2d) 1022, which in turn was decided solely upon the authority of the *Rios* case, *supra*.

Petitioner now comes before this Court by virtue of a writ of certiorari granted on May 26, 1930.

Question Involved.

The instant case involves only one question of law:

Does Section 34 of the Immigration Act of 1917 bar the deportation of seamen who have unlawfully entered this country subsequent to 1924, and have remained here for a period of more than three years before being apprehended?

Statute Involved.

Section 34 of the Immigration Act of 1917 provides:

> "That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the

United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this Act as provided in section twenty of this Act."

ARGUMENT.

POINT I.

Since petitioner, an alien seaman unlawfully in the United States, was not taken into custody within the three year period of limitation specified in Section 34 of the Immigration Act of 1917, he is, therefore, exempt from deportation, because the provisions of this section are in effect a statute of limitation.

Petitioner shipped from Piraeus, Greece, as a common seaman aboard the S. S. *Byron* and deserted his ship on September 10, 1925, immediately on its arrival in the Port of New York. He was taken into custody on December 18, 1928, more than three years after the date of his unlawful entry.

In *U. S. ex rel. Danikas* vs. *Day*, 20 F. (2d) 733 (C. C. A., Second Circuit), referring to Section 34 of the Immigration Act of 1917, Judge Augustus N. Hand, said, at page 735:

> "This section, naturally read, would seem to require the Secretary of Labor to arrest a seaman within three years after unlawfully landing in the country, if he sought to deport him; * * *"

and further, in the same case, at page 736, the Court said:

> "Section 34 is much plainer, for it says nothing about the institution of proceedings, but provides that 'any alien seaman who shall land in a port of the United States contrary to the provisions of this act * * * and shall at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody, * * * shall be deported'.
>
> *This, by the plainest language, makes the taking 'into custody'* within three years from landing the critical factor." (Italics ours.)

It was held further in *U. S. ex rel. Filippini* vs. *Day,* 18 F. (2d) 781, District Court, S. D., New York, December 3rd, 1926, that:

> "It is now the arrest which counts, and not the date of the issue of warrant or the time of the actual deportation."

Even in *U. S. ex rel. Rios* vs. *Day,* 20 F. (2d) 654, which is the basic case in the Second Circuit for the ruling that seamen claiming protection under Section 34, Act of 1917, may be deported under the provisions of Section 14, Act of 1924, Judge Manton, writing for a unanimous court, recognized the fact that a seaman could not be deported any time, and that the date of last entry

> " * * * controls the limitation as to when he may be deported",

and further held that the time limitation starts to run from the date of last entry.

The petitioner, therefore, submits that as the undisputed evidence shows that he was not taken into custody until more than three years after his arrival in the United

States, the Secretary of Labor is prohibited by the limitation contained in Section 34 of the Act of 1917, from subjecting him to deportation proceedings.

The law is well settled as to the application of Section 34 of the Immigration Act of 1917 to seamen.

POINT II.

Section 34 of the Act of 1917 creates a special class in favor of seamen.

The unanimous Court in *Nagle* vs. *Hansen,* C. C. A. 9th Circuit, 17 F. (2d) 557, dealing directly with this point said:

> "The general provisions in the 1924 act that aliens, who have entered unlawfully or remained illegally at any time after entering the United States shall be taken into custody and deported, is inconsistent with the provisions of section 34 of the act of 1917, and would suggest a repeal of the latter by implication; unless section 34 may be said to create a special class, subject to special different treatment. And, considering it in the relation it bears to other provisions of the act of 1917, we think it does create a special limitation, in favor of seamen as a class, which is not repealed by the 1924 act. The act of 1917 contained a general provision (Sec. 19) governing the deportation of aliens, the provision common to those who entered while belonging to excluded classes being that they might be deported within five years after entry. That this provision, as it affects all aliens not within the admissible classes, was repealed by section 14 of the act of 1924 is clear enough. That repeal, however, in reason and relation, does not effect the special conditions separately expressed in section 34 of the 1917 law."

The theory that Section 34, Act of 1917, creates a special class in favor of seamen is also held in *Rodgers* vs. *U. S.*, 185 U. S. 83, and *Carr* vs. *Zaja*, 38 F. (2d) 1016.

POINT III.

Section 14 of the Immigration Act of 1924 has no application to alien seamen.

The Commissioner of Immigration, in support of his alleged right to deport petitioner, relies on the questionable authority of Section 14 of the Immigration Act of 1924, which reads as follows:

> "Any alien, who at any time after entering the United States is found to have been at the time of entry not entitled under the Act to enter the United States, or to have remained therein for a longer period than permitted under the Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in Sections 19 and 20 of the Immigration Act of 1917. Provided, that the Secretary of Labor may, under such conditions and restrictions as to the support and care as he may deem necessary, permit permanently to remain in the United States any alien child who when under 16 years of age, was heretofore temporarily admitted to the United States, and who is now within the United States and either of whose parents is a citizen of the United States" (43 Stat. L. 162).

It is the contention of the petitioner that Section 14 has no application to alien seamen.

A reading of the Immigration Act of 1924 shows that it makes specific reference to "Immigrants, quota and non-

quota" (such term or terms being used in Sections 2 and 10 inclusive, and Sections 11, 12, 13, 16 and 18), to "aliens" (in Sections 3, 10, 14 and 15) and to "alien seamen" (in Sections 3 and 19) thereby creating by actual and specific reference three separate and distinct classes of individuals, viz.: (1) "immigrants", (2) "aliens", and (3) "alien seamen", and a certain, definite method of control and disposal is provided in the said Act for each class.

Inasmuch as petitioner does not claim to come within the category of an "immigrant" no argument need be advanced in opposition to those sections of the Act which relate to that class.

In connection with the second class, "aliens", the petitioner directs attention to the fact that the act provides for the entry of an alien (Sect. 3, Subdivs. 2, 3, 4 and 6), for the re-entry (Section 10), for deportation (Section 14), and for the maintenance of the exempt status provided in Section 3 (Section 15).

It would appear that Congress intended thereby to effect the control and regulation of "aliens" by these sections, and that these sections were directed to this particular class and to no other.

Apparently Congress thought it necessary to include in the Act of 1924, sections that would specifically refer to, and actually restrict, limit and control the third class "alien seaman", and it did so by Subdivision 5 of Section 3 (providing for the maintenance of the status of a bona fide seaman), Section 15 (providing for admission under a bond), Section 19 (prohibiting landing except in case of sickness or under Departmental regulations).

Section 19 even goes further and expressly gives to the Secretary of Labor the right and the power to prescribe rules and regulations "for the ultimate departure, removal,

or deportation of such alien [alien seaman] from the United States'' as shall have been permitted to land temporarily in order to reship foreign or for medical treatment.

The wording of this section appears to be perfectly clear, but in view of the conflicting opinions in connection with Section 14 created by the decisions of the Circuit Court of Appeals for the Second Circuit, and its alleged applicability to the third class, ''alien seamen'', notwithstanding the wording of Section 19, it appears that this is a situation where ''reference may be had to the reports of legislative committees to ascertain the purpose of Congress in adopting the Statute'' (*Church of the Holy Trinity* vs. *United States*, 143 U. S. 457).

While debates in Congress are not generally appropriate sources of information to discover the meaning of a statute (*Dunlay* vs. *United States*, 173 U. S. 65) the Supreme Court has considered explanatory statements made by members in charge of bills (*United States* vs. *St. Paul, Minn. and Manitoba R. C.*, 247 U. S. 310; *Wisconsin R. Comm.* vs. *C. B. & A. R. Co.*, 257 U. S. 563). The meaning of a statute is often to be sought from the surrounding circumstances and preceding history (*Guarantee Ins. Trust & S. D. Co.* vs. *Gellers*, 123 U. S. 276; *Prestons Browder*, 1 Wheat. 115; *U. S.* vs. *U. P. R. Co.*, 9 U. S. 72). The reports of a committee, including the bill as introduced, changes made in the frame of the bill during the course of its passage, and statements made by the Committee Chairman in charge of it, may be resorted to under proper qualifications (*U. S.* vs. *St. Paul Ry. Co.*, 247 U. S. 310; *Ozawa* vs. *U. S.*, 260 U. S. 178, 194; *Roberts* vs. *Southern Pac. Co.*, 186 Fed. 934).

Legislative History of the Act of 1924.

Before the passage of the 1924 act numerous concerted efforts had been made in the House of Representatives to curtail the rights of seamen. As early as December 31st, 1923, the Department of Labor submitted a proposed immigration act to Congressman Albert Johnson, Chairman of the House Committee on Immigration (68th Congress, 1st Session, Hearings before House Committee on Immigration and Naturalization, Serial 1A, pp. 551-565). That bill contained the provisions embodied in the House proposals for landing cards and for the repeal not only of Section 32 of the Act of 1917, which was subsequently repealed, but of Sections 33 and 34 as well.

Both of these suggestions were embodied in the Johnson bill (H. R. 7995) as reported in House Report No. 350 (68th Congress, 1st Session, March 24, 1924, see pp. 19 ff.), which stated that:

> "Enforcement of the sections (Secs. 32, 33, and 34) of the Immigration Act of 1917 respecting alien seamen has been one of the most difficult tasks confronting the Immigration Service" (p. 19).

Both provisions remained in the bill through the conference report of May 8, 1924.[1] Not until May 15th does

---

[1] 68th Congress, 1st Session, H. Reprt. 688. The bill in its then form, less than three weeks before it was signed by the President, contained a Section 21 (d): "*Section 32 of the Immigration Act of 1917 is repealed*, but shall remain in force as to all vessels, their owners, agents, consignees and masters, and as to all seamen, arriving in the United States prior to the enactment of this act. *Sections 33 and 34 of such act are repealed*, to take effect after the expiration of four months after the enactment of this act, but the provisions of such Section 34 shall thereafter remain in force in the case of any alien seaman who has landed in a port of the United States before such repeal became effective." (Italics ours.)

the conference bill (Conference Committee, print No. 1) apparently lose the provision directly repealing Section 34.

The Senate had opposed making any changes in the law in so far as it affected seamen. To quote the statement of Senator Lodge, made on April 18, 1924, "The House passed the bill with certain clauses in it relating to alien seamen. Those were stricken out by the Senate" (Congressional Record, 68th Congress, 1st Session, p. 6641).

It became necessary, as the two houses could not agree upon the question of alien seamen, to have a conference committee. Senator King sought strenuously to include in the Senate bill to be presented to the conference committee an amendment which contained an express provision for the deportation of seamen who remained more than sixty days unless they could show they had not abandoned their status or were admissible as immigrants (Sec. 17c to S. 2576, Congressional Record, 68th Congress, 1st Session, p. 6636). The amendment was debated and thereafter defeated (p. 6642), nor was there any suggestion that it was already embodied in the provisions of the bill. Senator Reed, the Chairman of the Senate Committee on Immigration, and later Chairman of the Conference Committee (*idem*, p. 8235), suggested that the alien seamen question "ought to be dealt with in a separate bill" (*idem*, p. 6645). The whole matter was left as an open question for the Conference Committee. On May 15th the bill was agreed upon by both houses.

Senator Reed and Congressman Johnson explained what has been done about alien seamen to their respective houses. Both were agreed on two propositions with reference to the seamen's provisions:

(1) That they made it possible to keep sick seamen aboard the boats.

Senator Reed said:

> "All that we have done to the alien seaman law that is new has been to provide that after the inspection of alien seamen by the immigration authorities—and that inspection is required under the present law, and there is nothing new about that—the shipowner or master must keep on board any seaman who is indicated by the immigration inspector as unfit to land" (*idem*, p. 8577).

Congressman Johnson expressed the same thought thus:

> "In reference to the alien seamen's provisions, let me give you an exact statement of its purpose. It will work fairly for the United States and fairly for the sailors of the world. Seamen cannot now be held on board ship even long enough to give them the medical examination necessary for the protection of the United States. We correct that situation" (*idem*, p. 8651).

(2) That Section 19 applied only to excludable seamen such as those from the barred zone.

Senator Reed's views appear in a dialogue between himself and Mr. Fletcher:

> "Mr. Fletcher: It seems to me there might be some question, by reason of the provisions of Section 19 and Section 3, as to whether there is any change in the matter of alien seamen. This is the provision in Section 3, that the word 'immigrant' does not include 'a bona fide alien seaman serving as such on a vessel arriving at a port of the United States'. He is not an immigrant. Then Section 19 provides that 'No alien seamen excluded from admission into the United States under the immigration laws', can do so and so. If he is not an immigrant, is he excluded under the immigration law?

Mr. Reed of Pennsylvania: Yes, Mr. President. There are a great many people, several hundred million of them, who are not immigrants, but who are excluded from admission under the immigration laws. In other words, the immigration laws prescribe who shall be immigrants, and forbid the admission of millions of others, including all the Chinese, the Hindus, and the Malays.

Mr. Fletcher: Then the Senator's contention is that the able seamen on these vessels, although not immigrants, are excluded under our immigration laws?

Mr. Reed of Pennsylvania: Yes, under certain conditions they are.

Mr. Fletcher: Under certain conditions; and they are taken care of under Sections 19 and 20 of the committee report?

Mr. Reed of Pennsylvania: Precisely. They can be admitted temporarily under regulations, and that is a humane thing, because a Chinese ship coming into our ports with a Chinese crew should not be made a jail while it is in port" (*idem*, p. 8578).

Mr. Johnson states the proposition thus:

"It is charged that Section 19 places the alien seamen under the immigration laws, and that to come ashore these seamen will have to comply with all the provisions of the immigration laws and be eligible to citizenship.

"There is nothing in that charge. The provision excluding from admission aliens ineligible to citizenship by its own terms does not apply to any alien who is not an immigrant as defined in Section 3. By the terms of Section 3, bona fide seamen are expressly declared not to be immigrants. Therefore seamen are not prevented from landing under the Japanese-Exclusion provision" (*idem*, p. 8651).

Mr. Johnson had previously—in answer to an inquiry as to the effect of Section 19—stated his views in these unmistakable terms:

> "I want to make it just as clear as I can that the provision the gentleman has just read only applies to those who cannot enter the United States, such as anarchists, and others who are in the excludable classes of Section 3 of the Act of 1917" (*idem*, p. 8638).

It is quite apparent that the Senate conferees had refused to agree to the bill unless the repeal of Section 34 of the 1917 Act was dropped. It was, as we have said, finally left out in the bill as it appears under date of May 15, 1924. Presumably the only effect of not repealing Section 34 was to retain the special status of seamen, including the three-year limitation in deportation proceedings of which the Circuit Court of Appeals has deprived them by its decision in the instant case. Throughout the extended debate on the seamen's provisions, as well as in the statements on the conference report which Senator Reed and Congressman Johnson made, Section 14 of the 1924 Act was never once mentioned. There does not appear to be any doubt that no one regarded Section 14 as applicable to seamen or as having any effect on their situation.

Since the 1924 Immigration Act, Congressman Johnson has made a number of efforts to obtain the repeal of Section 34 upon the ground that it unwarrantedly makes a privileged class of seamen. Thus as recently as the first session of the 70th Congress the House Committee on Immigration and Naturalization reported favorably H. R. 10078, containing certain additional provisions for the deportation of aliens. In House Report No. 484, to accompany the bill, Congressman Johnson, writing for the

committee, had this to say of Section 34 of the basic Act more than four years after the passage of the 1924 Act:

> "It will be noticed that this section (1) places a statute of limitation of three years from the time of landing upon the deportation of alien seamen, (2) affords a seaman a right to be heard before a board of special inquiry, and (3) apparently allows his admission unless he is at the time of such hearing a member of one of the excluded classes. No reason was apparent to your committee why a seaman should be granted any of these privileges, which are not granted to any other class of aliens, and it is therefore provided in the bill (subd. (b) of Sec. 7) that this section be repealed. The effect of this repeal will be to place the seamen upon the same plane as any other alien so far as the procedure in arrest and deportation cases is concerned" (p. 13).

This is not an inadvertent statement, for he used substantially the same argument in his efforts to put through the deportation bills of the previous Congresses (69th Congress, 1st Session, House Report 991, pp. 12-13, to accompany H. R. 11489; 68th Congress, 2nd Session, House Report 1292, pp. 14-15, to accompany H. R. 11796). His efforts during both sessions failed.

It would appear, therefore, that Representative Johnson, whose reputation as an expert on immigration, and the laws that govern and control it, and the man to whom the Department of Labor turns when it desires to effect changes in the Immigration Laws, is of the opinion even today that Section 34 of the Act of 1917 was not affected by any part of the Act of 1924, and that it is still in full force and effect.

It is well to note the fact that Mr. Johnson was the Chairman of the House Committee in the preparation of the bill which became Immigration Act of 1924.

POINT IV.

Section 34 of the Act of 1917 apparently applies only to alien seamen unlawfully in the United States.

It would seem, to petitioner, from the few cases on the point in question that most of the instances coming before the Court related to seamen who have stayed after lawful entry beyond the time limit provided by the Immigration Rules, and that the Courts, therefore, have felt that they did not come within the limitation provided in Section 34, Act of 1917.

The language of the Section is simple and unambiguous. It says in part:

> "That any alien seaman who shall land in a port of the United States, contrary to the provisions of this act shall be deemed to be unlawfully in the United States, and shall at any time within three years thereafter * * * be deported * * *."

This language undoubtedly means what it says. It refers to the provisions of the Act which provide for the lawful entry of alien seamen, such as

1. For a limited period to reship foreign.
2. For medical treatment.

and then continues to say clearly that a seaman landing for any other purpose "shall be deemed to be unlawfully in the United States."

The unlawful entry by petitioner is unquestioned. The Transcript of Record, page 10, folio 16, reads, in part, as follows:

"Result of Medical examination (State finding): not certified."

* * * * * *

"Passport Status: Alien has no passport."

and at page 14, folio 21, the following examination took place, before the Immigration Inspector in charge of the hearing:

"Q. At the time of your entry at the Port of New York, September 10, 1925, did you desert the S. S. *Byron*, or did you remain a member of the same?"

"A. I left the ship and went to New York."

* * * * * *

"Q. At the time of your entry, were you in possession of an unexpired immigration visa issued by an American Consul?"

"A. No."

In the official report of the inspector, containing his recommendations (Transcript of Record, page 16, fol. 24, and 25) he affirmatively finds that petitioner arrived at the Port of New York as a member of the crew of the S. S. *Byron*, on September 10, 1925, and *deserted*. The record further shows that petitioner was reported by the ship's owners on September 25, 1925, as being a *deserter*, and no proof at all of the payment of any head tax.

What clearer and stronger evidence could there be than the direct admission by petitioner that he *deserted* his ship, the report of the ship's owners that he was a *deserter*, the failure to submit to a medical examination and the failure to secure permission for temporary landing. There is no evidence that he ever received permission to land from anyone or for any purpose. The absence of a medical cer-

tificate is an unanswerable argument to the unlawfulness of petitioner's entry in view of the strict ruling requiring medical examination of every seaman before even "shore leave" is granted.

Throughout the argument of this case, first in the District Court for the Southern District of New York, and then in the Circuit Court of Appeals for the Second Circuit, and finally on the application for a writ of certiorari before this Court, petitioner has consistently contended that he was a *deserter*, and affirmatively admitted throughout the case that he was as a consequence "unlawfully in the United States". At no time in any of the various arguments in opposition to petitioner, or in any of the briefs filed by the United States attorney, was the claim made that there was a lawful entry on the part of petitioner. As a matter of fact the Government attorney quite willingly admitted and conceded the *desertion* of petitioner and his unlawful entry, apparently resting his case solely upon the decision in the *Rios* case and not bothering particularly about the facts relating to the entry of petitioner into the United States. After the consideration of this case even the Circuit Court of Appeals, for the Second Circuit, affirmatively found that petitioner was a "*deserter*" (Transcript of Record, page 21, folio 36).

It would appear that while there does not seem to be any decision directly in point, the inference to be drawn from the opinions in cases somewhat analogous, is to the effect that the real test lies in the answer to the question of "whether the entry was lawful or unlawful", and if unlawful, then Section 34 protects the seaman from deportation.

In a recent case in the District Court of the United States, for the Southern District of New York, *Cellamare vs. Day*, 32 F. (2d) 623, Judge Thacher said:

> "* * * The limitation contained in Section 34 of the Immigration Act of 1917 can have no application because in terms it applies only to alien seamen whose landing was contrary to the Act of 1917."

and in *Ex Parte Bildt*, 32 F. (2d) 984, it was said by the Court, after quoting Section 34, Act of 1917, as follows:

> "The difficulty of application arises out of the fact that the initial 'landing' of the appellant was not unlawful but pursuant to permission duly given by the immigration officials. But, if we assume its applicability during the sixty days covered by the permit the Immigration service had no right to proceed against him. His 'landing' became unlawful only upon the termination of the period, and hence it must be held that the period prescribed by it did not commence to run until September 30, 1925, less than three years prior to his arrest for deportation."

In *Zurbrick* vs. *Traicoff*, 38 F. (2d) 811, the Court (U. S. Circuit Court of Appeals, Sixth Circuit) said:

> "Indeed Section 34 of the Act of 1917 by its terms is limited to alien seamen who 'land' in the United States contrary to the provisions of that act, and does not in our opinion apply to alien seamen temporarily admitted under regulations pursuant to section 19 of the act of 1924, and who remain in this country beyond the time therein allowed."

POINT V.

Congress utilized in the Act of 1924 a certain definite method of repeal and modification.

The argument of the Government in the lower courts was to the effect that Section 34 of the Act of 1917 was repealed by the Act of 1924.

The petitioner contends that there is nothing inconsistent in the Act of 1924 with the provisions of Section 34 of the Act of 1917, and that the later Act neither expressly nor by implication repealed or superseded the earlier act.

The purpose of Congress in the enactment of the Immigration Act of 1924 is distinctly shown in Section 25 thereof, where it says:

> "The provisions of this act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this act."

In the Act of 1924 the framers utilized a particular method of changing, modifying or repealing sections of the Act of 1917. This method was by actual reference to specific sections to be amended or repealed.

This was done in the following instances:

> Act of 1924; Sect. 20, Subdiv. d: "Section 32 of the Act of 1917 is repealed * * *."
>
> Act of 1924; Sect. 26: "Section 9 of the immigration act of 1917 is amended to read as follows: '* * *.'"

Act of 1924; Sect. 27: "Section 10 of the immigration act of 1917 is amended to read as follows: '* * *.'"

The obvious conclusion to be drawn from the method used is that if Congress desired to repeal so important a provision as Section 34 of the Act of 1917, it would have followed a similar procedure and have done so by actual reference, as in the instances cited. This conclusion is further strengthened by the terms of Section 25 of the Act, wherein attention is called to the fact, and the warning issued that:

> "The provisions of this act are in addition to and not in substitution for the provisions of the immigration laws * * *."

As the Court well knows, the ordinary rules of statutory construction establish that Section 34 of the Act of 1917 is still in full force and effect. As indicated in the foregoing, it is apparent that there is no express repeal. Under the familiar rule of statutory construction appellant submits that a later statute will not repeal a prior statute unless they are clearly inconsistent and cannot be reconciled. Such is not the case here. The Immigration Act of 1917 is the basic immigration law of the land. The Act of 1924 does practically nothing but add quota and visa provisions to the prior act. Section 34 of the Act of 1917 deals with a certain, definite, special class, while Section 14 of the Act of 1924 is a general Statute and does not apply to the Special Class created by the Act of 1917.

POINT VI.

The construction placed on Section 34 of the Immigration Act of 1917 by the Department of Labor is entitled to great weight.

Where there is ambiguity in the meaning or application of a statute, as there apparently is in Section 14 of the Act of 1924, the practical construction placed upon it by those whose duty it was to carry it into execution is entitled to great weight and should not be disregarded or overturned except for cogent reasons and unless it is clear that such construction is erroneous.

After the passage of the Immigration Act of 1924, the United States Department of Labor, Bureau of Immigration, having the duty to carry the law into execution, caused the "Immigration Laws" to be printed by the Government Printing Office at Washington, for the information and guidance of its own agents and the general public, and it included in the printing of the Act of 1917, without change or comment, Section 34, proving conclusively that it was the opinion of the Immigration experts in that department that no part of the Act of 1924 changed or modified Section 34, Act of 1917 in any respect.

In 1927, when the Department of Labor again caused the Immigration Laws to be officially printed in book form, the Department again included Section 34 of the Act of 1917, without change or comment, and this was after the Department had had three years in which to study the application of the Act of 1924, and to observe its enforcement, effect and judicial interpretation, and notwithstanding the decisions of the Circuit Court of Appeals, for the Second Circuit.

At that time, the Department even went so far as to include in the printed book of that year, the official publication of the Department, the "Rules of March 1, 1927". Among those rules is quoted below, in part, Subdivision I, paragraph 1, of Rule 6, relating specifically to Section 34, Act of 1917, containing the regulations and instructions covering the "arrest and deportation of alien seamen", as follows:

> "Any alien who shall come to a United States Port as a seaman and land in the United States otherwise than in pursuance of and in accordance with the provisions of the Act of February 5, 1917, shall be arrested, as provided in Section 34 of said Act, whenever and wherever found in this country within three years from the date of landing."

As this rule is still in effect, it is apparent that the opinion of the experts on immigration in the Department of Labor in relation to the applicability of Section 34, Act of 1917, notwithstanding the provisions of Section 14, Act of 1924, to alien seamen unlawfully entering the United States, and remaining for more than three years, remains unchanged.

It is also well to note that the Department of Labor, with each Congress, following 1924, has endeavored to have the Act of 1924 amended so as specifically to repeal Section 34 of the Act of 1917, but without success (see pp. 12 and 13, *ante*).

It might be noted also that the compilers of the United States Code, United States Code Annotated, and the various Digests of Federal Laws, have without exception included Section 34, Act of 1917, as an inseparable part of the Immigration Laws of the United States.

POINT VII.

Since the decision in the instant case, the Circuit Court of Appeals for the Second Circuit has reversed its interpretation of the statute in question.

In all of the cases heretofore argued before the Circuit Court of Appeals, for the Second Circuit, principally *Piccollela* vs. *Day*, 36 F. (2d) 1022; *U. S. ex rel. Phillipides* vs. *Day*, 37 F. (2d) 1015; and *U. S. ex rel. Rios* vs. *Day*, 24 F. (2d) 654, the court had consistently held that Section 34 of the Act of 1917 was inapplicable to a situation such as arises in the instant case.

In a recent opinion, however, by Learned Hand, Circuit Judge, writing for a unanimous court, in the case of *U. S. ex rel. Anastasios Cateches* vs. *Day* (decided in December, 1930 and unreported as yet), the court admitted that they were concluded in the cases cited above from holding that Section 34 of the Act of 1917 was applicable to this situation because of their previous contrary holding in *U. S. ex rel. Danikas* vs. *Day*.

The court further specifically stated that there had been no repeal by the Act of 1924 of Section 34 of the Act of 1917. And further:

> "Thus we must construe section 34 of the Act of 1917 as still in force so far as it does not clash with any provisions of the Act of 1924."

and further in the opinion says:

> "As there has been no repeal by the Act of 1924 section 34 may remain 'applicable' to some of the cases which it covers, and not the rest, and we must determine where the case at bar lies."

There is no holding whatever that there is any such clash. It will be noted that the court admits and recognizes, however reluctantly, the continuing effectiveness of Section 34 of the Act of 1917.

In the *Anastasios Cateches* case from which the above references are taken, the Court, in order to void the writ of habeas corpus and effect the deportation of that petitioner, rather than admit definitely and conclusively their error in previous cases, through a circuitous method of reasoning, found that Cateches "landed lawfully" when his ship docked at New York, and that after his "lawful landing" formed an intention to desert and probably did desert. The Court reasons, therefore, that as the landing was lawful, his subsequent desertion was of no effect, that he was amenable to the terms of Section 14 of the Act of 1924 and was deportable because he had overstayed his leave.

In the instant case there is no evidence of even such a "lawful landing.". The entry record admits the *desertion.* The natural inference to be drawn, therefore, is that were this case to be reheard by the Circuit Court from which it came, that Court could only find that petitioner would be protected from deportation because of the terms of Section 34 of the Act of 1917. Such a holding, in view of the present attitude of this Court, as expressed in the Cateches case, would be inescapable.

POINT VIII.

The admissions contained in the decision in the Cateches case destroy the conflict between the Circuit Courts of Appeal for the Second and Ninth Circuits.

Heretofore the Circuit Court of Appeals for the Second Circuit has consistently held that Section 34 of the Act of 1917 was repealed by implication drawn from the provisions of Section 14 of the Act of 1924.

The case which has caused the misconstruction was *Rios* vs. *Day*, 24 F. (2d) 654, where the Court *in dictum* specifically declared the repeal of Section 34 of the Act of 1917 by Section 14 of the Act of 1924, although Section 34 had no application whatever, in view of the fact that Rios was apprehended within three years from the date of his landing, and further because of the fact that the landing was lawful.

This case was followed by *Cellamare* vs. *Day*, 32 F. (2d) 623; *Ex Parte Bildt*, 32 F. (2d) 892; *Picollela* vs. *Day*, 36 F. (2d) 1022, and *Zurbrich* vs. *Traicoff*, 38 F. (2d) 811, in each of which cases the landing was a legal landing.

In the Ninth Circuit, however, the Court held, in *Nagle* vs. *Hansen*, 17 F. (2d) 557, that there was no repeal by Section 14, Act of 1924, of Section 34, Act of 1917. The facts in this case required a direct answer to the question, and the Court answered it squarely by holding that there was no repeal.

This case was followed by a like decision in the same Circuit in *Carr* vs. *Zaja*, 38 F. (2d) 1016.

With exception of the instant case, these two latter cases are the only reported cases where the question of the applicability of Section 34, Act of 1917, is directly in point.

As previously pointed out, the cases in the Second Circuit do not come under the protective provisions of Section 34, Act of 1917, either because of the lawful landing or the fact that the three year period of limitation had not expired.

In the instant case, petitioner comes squarely within the holding of *Nagle* vs. *Hansen* and *Carr* vs. *Zaja* (in the Ninth Circuit) and the dicta of *Cateches* vs. *Day* (in the Second Circuit) in that:

1. Petitioner is an alien seaman.
2. His landing was unlawful.
3. He was not taken into custody within three years.

Therefore, by reason of the provisions of Section 34, Immigration Act of 1917, petitioner cannot be deported.

CONCLUSION.

For the reasons stated it is respectfully submitted that the judgment affirming the dismissal of the writ of habeas corpus and remanding petitioner to the custody of the Commissioner of Immigration should be reversed.

Respectfully submitted,

THOS. A. KANE,
Attorney for Petitioner.

Office Supreme Court, U. S.
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No. ~~617~~ 92

In the Supreme Court of the United States

OCTOBER TERM, 1929

DEMETRIUS PHILIPPIDES, PETITIONER

v.

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION, PORT OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 847

DEMETRIUS PHILIPPIDES, PETITIONER

v.

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION, Port of New York

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The question involved is whether an alien who arrived in this country after the effective date of the Immigration Act of 1924 as a seaman and deserted his ship, and who remained here for a longer period than permitted by that Act and the regulations of the Department of Labor thereunder, may be deported at any time as provided in said Act, or only within three years after entry in accordance with the Immigration Act of 1917. The Circuit Court of Appeals for the Second Circuit in the instant case and in the case of *Piccolella* v. *Commissioner of Immigration,* 36 F. (2d) 1022 (certiorari denied March 3, 1930; No. 562), and

the Circuit Court of Appeals for the Sixth Circuit in the case of *Zurbrick, District Director of Immigration* v. *Traicoff*, decided March 14, 1930 (~~not yet reported~~); held that the three-year period of limitation prescribed by the Act of 1917 is not applicable in such cases. But the Circuit Court of Appeals for the Ninth Circuit in the case of *Carr, Director of Immigration* v. *Zaja*, 37 F. (2d) 1016 (decided February 17, 1930), held to the contrary. Because of this conflict of decisions, a petition for certiorari was filed on May 16, 1930 (No. 906), in behalf of the Director of Immigration in the *Zaja case*. The respondent herein consequently does not oppose the issuance of the writ in the instant case.

A copy of the petition for certiorari in the *Zaja case* accompanies this memorandum.

Respectfully submitted.

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MAY 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930

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CHARLES ELMORE

Nos. 92 and 336

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 92

DEMETRIUS PHILIPPIDES, PETITIONER

v.

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION, PORT OF NEW YORK

No. 336

UNITED STATES OF AMERICA EX REL. COSTAS CATECHES, PETITIONER

v.

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 92

DEMETRIUS PHILIPPIDES, PETITIONER

v.

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION, Port of New York

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No. 336

UNITED STATES OF AMERICA EX REL. COSTAS Cateches, petitioner

v.

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

No. 92

The opinion of the Circuit Court of Appeals (R. 21) is reported in 37 F. (2d) 1015. The

opinion of the District Court (R. 17) has not been reported.

No. 336

The *per curiam* order of the Circuit Court of Appeals (R. 18) is reported in 41 F. (2d) 1019. The District Court rendered no opinion.

JURISDICTION

No. 92

The judgment of the Circuit Court of Appeals was entered on February 10, 1930. (R. 22.) The petition for a writ of certiorari was filed on April 25, 1930. (R. 23.) Certiorari was granted on May 26, 1930. (R. 23.)

No. 336

The judgment of the Circuit Court of Appeals was entered on May 12, 1930. (R. 19.) The petition for a writ of certiorari was filed on August 7, 1930. (R. 20.). Certiorari was granted on October 13, 1930. (R. 19.)

The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an alien who arrived in this country as a seaman after the effective date of the Immigration Act of 1924, and deserted, and who remained here for a longer period than permitted by the regulations of the Department of Labor, promulgated

under that Act, may be deported at any time as provided in that Act, or only within three years after entry.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix to the brief for the petitioner in *Carr* v. *Zaja*, No. 125, October Term, 1930.

STATEMENT

No. 92

The following facts are shown by the petition for *habeas corpus* and return of the Commissioner of Immigration, who is respondent here.

The petitioner, an alien, arrived in this country in September, 1925, as a seaman. (R. 8.) Immediately upon his entry he deserted the vessel and has since been employed in a restaurant. (R. 9.) At the time of entry he was not in possession of an unexpired immigration visa. (R. 9.) On December 19, 1928, he was arrested on the charge that he had remained in the United States for a longer time than permitted by the 1924 Act and regulations made thereunder. (R. 4, 9.) After a hearing before the immigration authorities, he was ordered deported on this ground. (R. 2.)

The petitioner then sued out a writ of *habeas corpus* in the District Court for the Southern District of New York. (R. 3.) After a hearing, the writ was dismissed. (R. 17.) On appeal the judgment below was affirmed. (R. 22.)

The following facts are shown by the petition for *habeas corpus* and the return of the Commissioner of Immigration, who is respondent here.

The petitioner, an alien, arrived in this country in October, 1925, as a seaman aboard an Italian ship. (R. 3.) He deserted the vessel immediately upon his entry, and has since been engaged in land employment. (R. 5.) On May 8, 1929, he was arrested by the immigration authorities, and accorded a hearing upon the charge that he had remained here longer than permitted by the 1924 Act and the regulations made thereunder. As the result of the hearing he was ordered deported. (R. 5.)

The petitioner thereupon petitioned the United States District Court for the Southern District of New York for a writ of *habeas corpus*, alleging, in substance, that the order of deportation was void because his arrest was not effected within three years from the date of his entry. (R. 3.) After a hearing the writ was dismissed. (R. 15.) That action was affirmed on appeal. (R. 19.)

Argument

These cases present the precise question involved in *Carr* v. *Zaja*, No. 125, October Term, 1930, and the argument presented in the brief for the petitioner filed in that case is adopted here.

In each of the instant cases the brief for the seaman asserts that he landed in violation of the

terms of the Act of 1917 and seeks to base on this assumption a right to avoid deportation. In the view which we take of the matter, this would be immaterial even if it were proved. See pp. 11–12 of brief for petitioner in *Carr* v. *Zaja*, No. 125.

Moreover, we maintain that upon no possible construction of the statutes can a seaman insist upon the procedure outlined in Section 34 of the 1917 Act unless he affirmatively proves that his entry was "contrary to the provisions of this Act."

There is nothing in the record in either case which shows that the petitioner's entry was contrary to those provisions. Testimony or a finding that the seaman "deserted" the ship or that he "left" the ship is too ambiguous to establish this. And the mere entry in the immigration record "Result of Medical examination: * * * not certified" does not prove unlawfulness of entry. The statute does not require the issuance of a certificate to every seaman who passes the medical examination, and in practice certificates are not issued to such seamen. See Section 16 of Immigration Law, Act of 1917 (39 Stat. 874, 885); Rule 6, Subdivision F of Immigration Rules of February 1, 1924; Rule 7, Subdivision F of Immigration Rules of January 1, 1930. The absence of a medical certificate is as consistent with the assumption that the seaman passed the medical examination as it is with the assumption that he avoided it.

CONCLUSION

It is respectfully submitted that the judgments below should be affirmed.

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JANUARY, 1931.

U. S. GOVERNMENT PRINTING OFFICE: 1931

SUPREME COURT OF THE UNITED STATES.

No. 92.—October Term, 1930.

Demetrius Philippides, Petitioner, *vs.* Benjamin M. Day, Commissioner of Immigration, Port of New York.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[March 23, 1931.]

Mr. Justice Holmes delivered the opinion of the Court.

The petitioner was arrested in New York on December 19, 1928, and after a hearing was ordered to be deported to Greece, on the ground that he had remained in the United States for a longer time than permitted under the Immigration Act of 1924 or the regulations made under it. He is a native of Greece; shipped from that country as a seaman and arrived at New York on September 10, 1925, when he deserted, and has remained in this country ever since, that is, for more than three years before the arrest. He sued out a writ of habeas corpus, setting up the Immigration Act of February 5, 1917, c. 29, § 34, 39 Stat. 874, 896, as a statute of limitation entitling him to remain. The writ was ordered to be dismissed by the District Court and the order was affirmed by the Circuit Court of Appeals for the Second Circuit. 37 F. (2d) 1015, citing *United States ex rel. Piccolella* v. *Commissioner of Immigration*, 36 F. (2d) 1022, which in turn cites *United States ex rel. Rios* v. *Day*, 24 F. (2d) 654. A contrary decision was reached by the Circuit Court for the Ninth Circuit in *Carr, Director of Immigration* v. *Zaja*, 37 F. (2d) 1016, and writs of certiorari were granted by this Court.

Section 34 of the Act of 1917 provides that "any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, . . . be taken into custody" and upon the conditions there stated shall be deported. It may be assumed that under this statute the time

within which a seaman can be arrested for deportation is limited to three years from the date of entry. But by the Immigration Act of May 26, 1924, c. 190, § 14, 43 Stat. 153, 162, "Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States, or to have remained therein for a longer time than permitted under this Act, or regulations made thereunder", is to be deported in the same manner as provided for in §§ 19, 20, of the Immigration Act of 1917. It is argued elaborately for the petitioner and is conceded by the Government that § 34 of the earlier Act is not repealed by the later one. See § 25 of the latter. For the purposes of this case we may assume this to be true, and that in accordance with this § 25, the earlier Act § 34 is in force if not inapplicable. But we cannot accept the conclusion that deserting alien seamen are thereby made a favored class to be retained in this country when other aliens would be compelled to leave. 'Any alien' in § 14 of the Act of 1924 includes alien seamen on its face and by the definition in § 28, *ibid.* It is obvious that the petitioner, whether he entered rightfully or wrongfully, remained in the United States longer than he was permitted to by the law. He deserted after the Act of 1924 was in effect. The regulations under §§ 15 and 19 allowed only sixty days to alien seamen permitted to enter. If he entered without permission he was not entitled to more. It seems to us too clear to need argument that the limitation of three years in § 34 of the Act of 1917 does not override or qualify the clear and definite terms of § 14 of the Act of 1924. Those terms must prevail. *Zurbrick* v. *Trinkoff,* 38 F. (2d) 811. *United States ex rel. Cateches* v. *Day,* 45 F. (2d) 142.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.